

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Norfolk Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO.: 2:15cr160
)	
ARTHUR DEMERILL SANTIFUL,)	
)	
Defendant)	

DEFENDANT'S REPLY TO RESPONSE OF THE UNITED STATES IN OPPOSITION
TO DEFENDANT'S MOTION TO SUPPRESS

The Defendant, Arthur Demerill Santiful ("Mr. Santiful"), respectfully submits this reply to the Response of the United States ("the Government") in Opposition to Defendant's Motion to Suppress.

The Government has had a transcript prepared of the interview(s) of Mr. Santiful (See Exhibit A to ECF Doc. 53). The Defense does not agree with all of the recitations in the Government's Response (ECF Doc. 53) about the exchange between Mr. Santiful and Detective Dooley regarding the right to talk to a lawyer and have a lawyer present during questioning.¹ The Court will have to listen to this portion of the tape and draw a conclusion about what Mr. Santiful and the Detective each said.

The Government cites to *United States v. Cardwell*, 433 F.3d 378, 389-90 (4th Cir. 2005) for "finding 'implied waiver' in defendant's willingness to answer questions after being advised of rights." See Government's Response ECF Doc. 53, p. 5). In

¹ Mr. Santiful reviewed the video/audio recording of the interview and confirmed that , when asked if he had any questions about his right to counsel he said "I want a lawyer. I want one here right now." and that after Detective Dooley gave some explanation Santiful responded "Nah, Ill wait it out", meaning he would wait for a lawyer.

Cardwell, the defendant never invoked any of his *Miranda* rights and the court found that failure to invoke his rights coupled with his continued willingness to answer questions was “as clear an indicia of his implied waiver of his right to remain silent as we can imagine.” *Id.* at 390.

In *Smith v. Illinois*, 469 U.S. 91 (1984), the United States Supreme Court found that the defendant’s response of “Uh, yeah. I’d like to do that.” to the right to consult with a lawyer and have him present was not ambiguous and the defendant’s subsequent responses could not be used to construe his response as ambiguous. The Government is trying to do the same thing in this case by using the continued reading of the rights and Mr. Santiful’s responses as making his initial assertion ambiguous. The *Smith* Court said that the assertion of the right and any subsequent waiver must be distinct inquiries.

Detective Dooley assured Mr. Santiful that he was not giving a recorded or written statement (ECF Doc. 53, Ex. A, p. 3). “In assessing voluntariness, we ask whether the defendant had ‘full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it’. In assessing voluntariness, we ask whether the defendant’s statement was ‘the product of a free and deliberate choice [or the result of] intimidation, coercion, or deception’”. *United States v. Cardwell*, *supra* at 389 (citing *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135 (1986))

Finally, in *Alvarez v. Gomez*, 185 F. 3d 995, 999 (9th Cir., 1999), the 9th Circuit found that the defendant’s “...repeated questions about the immediate availability of an attorney were a clear and unequivocal invocation of his *Miranda* right to counsel...”.

When the defendant later responded “yeah” when asked “Okay, You wanna talk to us without a lawyer here, right?” (*Id* at 997), the Court found this was not a valid waiver.

CONCLUSION

For all the reasons set forth above and in his Motion to Suppress and Memorandum in Support (ECF Docs. 46 and 47), it is respectfully requested that this Court grant the Motion to Suppress.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all attorneys of record including the following:

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